

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION


Amiel Steve Weller,	:	
Petitioner	:	Civil Case No. 2:05-cv-800
v.	:	Judge Sargus
United States of America,	:	Magistrate Judge Abel
Respondent	:	

**ORDER**

Petitioner Amiel Steve Weller, a resident of the State of Ohio, brings this action, which he styles a petition for writ of mandamus, against the State of Florida. The petition alleges that Florida denied Weller constitutional rights in connection with his criminal convictions in that State. On August 26, 2005, Magistrate Judge Abel filed a Report and Recommendation on Initial Screening that held that because the petition challenged the validity of Weller's Florida criminal convictions, the Court would treat it as a petition for writ of habeas corpus under 28 U.S.C. §2241. The Magistrate Judge recommended that the petition be dismissed because it challenges Weller's convictions in the State of Florida and it does not establish that this Court has jurisdiction to determine whether those convictions were had in violation of the Constitution of the United States.

This matter is before the Court for review of the Magistrate Judge's Report and Recommendation. No objections have been filed to the Report and Recommendation. Upon *de novo* review as required by 28 U.S.C. § 636(b)(1)(B), the Court ADOPTS the Report and Recommendation. The petition does not allege that Weller is "in custody" as required by 28 U.S.C. § 2254(b) and (c). See, *Spencer v. Kemna*, 118 S.Ct. 978, 983 (1998). Further, this Court does not have jurisdiction to consider whether Weller's Florida conviction was constitutionally obtained. 28 U.S.C. § 2243; see *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 494-95 (1973).

Accordingly, the Clerk of Court is DIRECTED to enter JUDGMENT dismissing the petitioner because it does not allege that Weller is in custody and this Court is without jurisdiction to determine whether his convictions in the State of Florida were had in violation of the Constitution of the United States.

  
12-21-2005  
Edmund A. Sargus, Jr.  
United States District Judge